

EXHIBIT A

In The Matter Of:

*SABINA PARADI v.
MICHAEL R. PHILLIPS*

MICHAEL R. PHILLIPS

August 21, 2007

JPB

MERRILL LEGAL SOLUTIONS

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PHILLIPS MICHAEL R. - Vol. 1

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<p>09:30:56</p> <p>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----X SABINA PARADI, a Judicially Declared Incapacitated Person by the Guardians of her Person and Property, BODO PARADI and MARY MOORE,</p> <p>Plaintiffs,</p> <p>-against- Civil Action No. 07 CIV 3640 (JCF)</p> <p>MICHAEL R. PHILLIPS,</p> <p>Defendant.</p> <p>-----X</p> <p>August 21, 2007 9:47 a.m.</p> <p>Videotape Deposition of MICHAEL R. PHILLIPS, taken by Plaintiff, pursuant to Notice, at the offices of DeCaro & Kaplen, 20 Vesey Street, New York, New York, before William Visconti, a Shorthand Reporter and Notary Public within and for the State of New York.</p>	<p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED</p> <p>3 by and between the attorneys for the</p> <p>4 respective parties herein that filing and</p> <p>5 sealing be and the same are hereby waived.</p> <p>6 IT IS FURTHER STIPULATED AND AGREED</p> <p>7 that all objections, except as to the form</p> <p>8 of the question, shall be reserved to the</p> <p>9 time of the trial.</p> <p>10 IT IS FURTHER STIPULATED AND AGREED</p> <p>11 that the within deposition may be signed</p> <p>12 and sworn to before any officer authorized</p> <p>13 to administer an oath with the same force</p> <p>14 and effect as if signed and sworn to before</p> <p>15 the Court.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1</p> <p>2 APPEARANCES:</p> <p>3 DE CARO & KAPLEN</p> <p>4 Attorneys for Plaintiffs</p> <p>5 20 Vesey Street</p> <p>6 New York, New York 10007</p> <p>7</p> <p>8 BY: MICHAEL V. KAPLEN, ESQ.</p> <p>9</p> <p>10 JAMES D. BUTLER, ESQ</p> <p>11 Attorneys for Defendant</p> <p>12 591 Summit Avenue</p> <p>13 Jersey City, New Jersey 07306</p> <p>14</p> <p>15 ALSO PRESENT:</p> <p>16 SARAH ENGELMAN, Videographer</p> <p>17 SUSAN PHILLIPS</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>09:46:56 1</p> <p>09:46:58 2 MR. KAPLEN: I just want the record</p> <p>09:47:10 3 to reflect before we start that I had informed</p> <p>09:47:14 4 Defendant's counsel that Sabina Paradi passed</p> <p>09:47:20 5 away on June 30th, 2007 and that we have agreed</p> <p>09:47:24 6 that although formal substitution has not taken</p> <p>09:47:26 7 place and legal proceedings of California have</p> <p>09:47:30 8 not taken place as of yet to substitute the</p> <p>09:47:32 9 estate of Miss Paradi as party Plaintiff in this</p> <p>09:47:38 10 action, we have agreed nonetheless to go forward</p> <p>09:47:42 11 with the deposition of Defendant today to be used</p> <p>09:47:46 12 as if all of that has formally taken place.</p> <p>09:47:58 13 MR. BUTLER: That's correct.</p> <p>09:48:02 14 THE VIDEOGRAPHER: This is the video</p> <p>09:48:04 15 operator speaking Sarah Engelman of Merrill Legal</p> <p>09:48:10 16 Services, 25 West 45th Street, New York, New York</p> <p>09:48:16 17 10037. Today is August 21, 2007 and the time is</p> <p>09:48:20 18 9:47 a.m. We are at the offices of</p> <p>09:48:22 19 DeCaro & Kaplen to take the videotape deposition</p> <p>09:48:26 20 of Michael Phillips in the matter of Sabina</p> <p>09:48:28 21 Paradi a judicially declared incapacitated person</p> <p>09:48:34 22 by the guardians of her person and property, Bodo</p> <p>09:48:38 23 Paradi and Mary Moore versus Michael R. Phillips</p> <p>09:48:38 24 in the United States District Court Souther</p> <p>25 District of New York. Will counsel introduce</p>

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<p>09:48:40 1 09:48:40 2 themselves for the record. 09:48:44 3 MR. KAPLEN: Good morning, I'm 09:48:44 4 Michael Kaplen and I represent the Plaintiffs in 09:48:46 5 this case. 09:48:48 6 MR. BUTLER: James D. Butler on 09:48:50 7 behalf of the Defendant. 09:48:52 8 THE VIDEOGRAPHER: Will the court 09:48:58 9 reporter, Bill Visconti, of Merrill Legal 10 Services swear the witness. 11 12 MICHAEL R. PHILLIPS, 13 having been first duly sworn by the Notary Public 14 (William Visconti), was examined and testified as 15 follows: 09:49:04 16 EXAMINATION CONDUCTED BY MR. KAPLEN: 09:49:04 17 Q. Good morning. 09:49:06 18 A. Good morning. 09:49:10 19 Q. Again, my name is Michael Kaplen and 09:49:12 20 I represent the late Sabina Paradi and her family 09:49:16 21 in connection with this case. I'm going to be 09:49:20 22 asking you questions today concerning an incident 09:49:22 23 that happened on February 25th of 2007 and if you 09:49:24 24 don't understand my questions please tell me and 25 we will rephrase those questions for you. Okay?</p>	<p>09:50:04 1 MICHAEL R. PHILLIPS 09:50:06 2 Q. Does anybody else reside there 09:50:06 3 besides the three of you? 09:50:10 4 A. No. 09:50:10 5 Q. And your wife, does she own a 09:50:12 6 vehicle? 09:50:14 7 A. Yes. 8 Q. Did she own a vehicle in February of 09:50:16 9 2007? 09:50:16 10 A. Yes. 09:50:18 11 Q. What type of vehicle was that that 09:50:20 12 she owned? 09:50:24 13 A. She owns a Dodge Caravan. 09:50:26 14 Q. In addition to that Dodge Caravan and 09:50:28 15 the vehicle that you were driving on the date of 09:50:32 16 this incident, which we will get to in a moment, 09:50:32 17 does anybody in that household own any other 09:50:34 18 vehicles? 09:50:36 19 A. Besides myself, no. 09:50:36 20 Q. And your wife? 09:50:38 21 A. Yes. 09:50:38 22 Q. Your son owns a vehicle? 09:50:40 23 A. No. 09:50:40 24 Q. So there is only two vehicles in the 25 house?</p>
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<p>09:49:26 1 MICHAEL R. PHILLIPS 09:49:28 2 A. Okay. 09:49:28 3 Q. You understand that this is being 09:49:30 4 videotaped? 09:49:30 5 A. Yes. 09:49:32 6 Q. You understand please that your 09:49:32 7 answers have to be oral? 09:49:36 8 A. Yes. 09:49:38 9 Q. So we get it all down both by our 09:49:38 10 stenographer and as well as the video? 09:49:40 11 A. Yes. 09:49:40 12 Q. Can you tell us please where you 09:49:42 13 currently reside? 09:49:44 14 A. 2 Robin Road, Rumson, New Jersey. 09:49:46 15 Q. Is that a private residence? 09:49:46 16 A. Yes. 09:49:50 17 Q. Who did you reside there with? 09:49:52 18 A. My wife Susan and my son John. 09:49:54 19 Q. What is Susan's full name? 09:49:56 20 A. Susan Raquel Phillips. 09:49:58 21 Q. How long have you resided there? 09:49:58 22 A. I have been there for almost 20 09:50:02 23 years. 09:50:04 24 Q. Is this a one-family house? 25 A. Yes.</p>	<p>09:50:42 1 MICHAEL R. PHILLIPS 09:50:44 2 A. Yes. 09:50:46 3 Q. On February 25th of 2007 what type of 09:50:50 4 vehicle were you driving? 09:50:52 5 A. My '88 Chevrolet pickup. 09:50:54 6 Q. What year vehicle was that? 09:50:56 7 A. 1988. 09:50:56 8 Q. Does that vehicle have power 09:50:56 9 steering? 09:50:58 10 A. Yes. 09:50:58 11 Q. Power brakes? 09:51:00 12 A. Yes. 09:51:00 13 Q. Antilock brakes? 09:51:02 14 A. Yes. 09:51:04 15 Q. Automatic or manual transmission? 09:51:08 16 A. Manual. 09:51:12 17 Q. As a result of the incident that 09:51:14 18 happened on February 25th of 2007 was there any 09:51:14 19 damage to your vehicle? 09:51:22 20 A. No. 09:51:22 21 Q. No damage whatsoever to any portion 09:51:22 22 of the vehicle? 09:51:26 23 A. No, sir. 09:51:28 24 Q. Did you take your vehicle anyplace 25 for an inspection of any kind?</p>

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09:51:28 1 MICHAEL R. PHILLIPS
 09:51:30 2 A. No.
 09:51:32 3 Q. Do you know if your vehicle was
 09:51:36 4 photographed?
 09:51:38 5 A. I don't know.
 09:51:42 6 MR. KAPLEN: Mr. Butler, do you have
 09:51:44 7 the color photographs of this incident of the
 09:51:46 8 truck involved in this incident?
 09:51:48 9 MR. BUTLER: The vehicle was
 09:51:52 10 photographed. I sent you all that I have which
 09:51:56 11 are photocopies. I have arranged and I
 09:51:58 12 anticipate getting within the next day or two the
 09:52:02 13 color photo and which you have been trying and I
 09:52:04 14 finally succeeded but I have not seen it yet.
 09:52:06 15 Q. Do you know if any videos were taken
 09:52:06 16 of the vehicle subsequent to this accident?
 09:52:08 17 A. I don't know.
 09:52:08 18 MR. KAPLEN: Mr. Butler, were any
 09:52:20 19 videos taken?
 09:52:22 20 MR. BUTLER: Not to my knowledge.
 09:52:22 21 Q. Now, on February 25th of 2007 can you
 09:52:30 22 tell me by whom were you employed?
 09:52:34 23 A. Niederlander Organization.
 09:52:38 24 Q. What is your business or profession?
 09:52:40 25 A. My profession is an assistant

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09:52:40 1 MICHAEL R. PHILLIPS
 09:52:44 2 carpenter. I'm a stagehand.
 09:52:44 3 Q. How long were you employed by them?
 09:52:46 4 A. I have been working in the business
 09:52:48 5 for over 32 and a half years.
 09:52:50 6 Q. At that time did you have any other
 09:52:52 7 employment in addition to your employment with
 09:52:52 8 Niederlander?
 09:52:54 9 A. I don't understand.
 09:52:56 10 Q. Were you employed anyplace else on
 09:52:56 11 February 25th?
 09:52:56 12 A. No.
 09:53:00 13 Q. Did you have any other independent
 09:53:00 14 work that you did in addition to working with
 09:53:00 15 Niederlander?
 09:53:02 16 A. No.
 09:53:06 17 Q. Did you have any independent business
 09:53:06 18 that you operated in addition to your employment
 09:53:08 19 with Niederlander?
 09:53:10 20 A. No.
 09:53:16 21 Q. Approximately what time did this
 09:53:18 22 incident happen with Sabina Paradi?
 09:53:24 23 A. Approximately 9:20 p.m. Sunday night.
 09:53:26 24 Q. Where were you coming from?
 09:53:28 25 A. I was coming from work.

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09:53:26 1 MICHAEL R. PHILLIPS
 09:53:30 2 Q. Where was that?
 09:53:32 3 A. The Mintzcoff Theater.
 09:53:34 4 Q. Where was that located?
 09:53:34 5 A. Between 44th and 45th street and
 09:53:38 6 Broadway.
 09:53:38 7 Q. What time did you get to work that
 09:53:40 8 day?
 09:53:42 9 A. I got to work that day at twelve
 09:53:42 10 o'clock.
 09:53:42 11 Q. What time did your employment end
 09:53:44 12 that day?
 09:53:52 13 A. 9:05.
 09:53:54 14 Q. During the course of that day did you
 09:53:54 15 have any alcoholic beverages to drink?
 09:53:56 16 A. No.
 09:53:58 17 Q. During the course of that day were
 09:54:02 18 you under any type of medication?
 09:54:04 19 A. I had Advil Sinus And Cold Medicine.
 09:54:06 20 Q. And that was for a common cold?
 09:54:08 21 A. Yes.
 09:54:12 22 Q. When was the last time that you took
 09:54:14 23 this medication prior to 9:05 p.m.
 09:54:22 24 A. At lunchtime that day.
 09:54:24 25 Q. After you left your place of

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09:54:24 1 MICHAEL R. PHILLIPS
 09:54:26 2 employment, what was your intended destination?
 09:54:28 3 A. Going home.
 09:54:28 4 Q. At the time of this incident was
 09:54:28 5 there anybody in your vehicle?
 09:54:32 6 A. No.
 09:54:34 7 Q. From the time that you got in your
 09:54:36 8 vehicle intending to go home, did you have
 09:54:38 9 anybody in your vehicle that you dropped off
 09:54:38 10 prior to this incident?
 09:54:42 11 A. No.
 09:54:48 12 Q. Prior to reaching the location of
 09:54:50 13 this accident which I understand to be Ninth
 09:54:52 14 Avenue and West 37th Street in Manhattan, did you
 09:54:52 15 make any stops?
 09:54:58 16 A. No.
 09:54:58 17 Q. Did you have anything to eat during
 09:54:58 18 the course of that day?
 09:55:00 19 A. Yes.
 09:55:02 20 Q. How many meals did you eat?
 09:55:02 21 A. Two meals.
 09:55:04 22 Q. What meals were those?
 09:55:08 23 A. I don't remember. I don't know.
 09:55:12 24 Q. While you were in your vehicle
 09:55:12 25 proceeding to this location, were you eating

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<p>09:55:12 1 MICHAEL R. PHILLIPS</p> <p>09:55:12 2 anything at the time?</p> <p>09:55:14 3 A. No.</p> <p>09:55:16 4 Q. Were you drinking at the time</p> <p>09:55:16 5 anything?</p> <p>09:55:18 6 A. No.</p> <p>09:55:18 7 Q. Any coffee or soda or water?</p> <p>09:55:22 8 A. No.</p> <p>09:55:22 9 Q. Do you own a cell phone?</p> <p>09:55:24 10 A. Yes.</p> <p>09:55:24 11 Q. Did you own a cell phone on</p> <p>09:55:24 12 February 25th?</p> <p>09:55:26 13 A. Yes.</p> <p>09:55:26 14 Q. Is it the same cell phone that you</p> <p>09:55:26 15 own today?</p> <p>09:55:28 16 A. No.</p> <p>09:55:30 17 Q. The same phone number?</p> <p>09:55:32 18 A. The same phone number, yes.</p> <p>09:55:36 19 Q. What is that phone number?</p> <p>09:55:38 20 A. 908-227-8932.</p> <p>09:55:38 21 Q. What carrier is that?</p> <p>09:55:46 22 A. Verizon.</p> <p>09:55:50 23 Q. From the time that I got into the</p> <p>09:55:52 24 vehicle at approximately 9:05 until the time of</p> <p>09:55:52 25 that incident, did you use that cell phone for</p>	<p>09:56:46 1 MICHAEL R. PHILLIPS</p> <p>09:56:46 2 A. Yes.</p> <p>09:56:48 3 Q. And you were going westbound?</p> <p>09:56:50 4 A. Yes.</p> <p>09:56:54 5 Q. As you approached the intersection of</p> <p>09:57:00 6 Ninth Avenue what were the weather conditions?</p> <p>09:57:06 7 A. Snowing, nasty, dark, icy, wet.</p> <p>09:57:08 8 Q. Had there been any accumulation of</p> <p>09:57:18 9 snow on the roadway?</p> <p>09:57:24 10 A. Slush, ice, wet roadways.</p> <p>09:57:30 11 Q. How long had it been snowing?</p> <p>09:57:30 12 A. The whole day, pretty much. I guess</p> <p>09:57:32 13 the whole day.</p> <p>09:57:36 14 Q. While you were driving and you were</p> <p>09:57:40 15 approaching this intersection of Ninth Avenue and</p> <p>09:57:42 16 West 37th Street, can you describe the snow</p> <p>09:57:42 17 conditions for me as being light, medium or heavy</p> <p>09:57:46 18 or something else?</p> <p>09:57:48 19 A. Heavy.</p> <p>09:57:48 20 Q. Did you have windshield wipers in</p> <p>09:57:48 21 your truck?</p> <p>09:57:50 22 A. Yes.</p> <p>09:57:50 23 Q. Were they operational?</p> <p>09:57:52 24 A. Yes.</p> <p>09:57:52 25 Q. Were you using them at the time?</p>
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<p>09:55:52 1 MICHAEL R. PHILLIPS</p> <p>09:55:54 2 any reason?</p> <p>09:56:04 3 A. No.</p> <p>09:56:04 4 Q. Did you use the cell phone after the</p> <p>09:56:06 5 incident?</p> <p>09:56:06 6 A. Yes.</p> <p>09:56:08 7 Q. Who did you call afterwards?</p> <p>09:56:08 8 A. I called my wife.</p> <p>09:56:10 9 Q. Did you call anybody else?</p> <p>09:56:12 10 A. And I called the person that I was</p> <p>09:56:16 11 supposed to work for the following morning.</p> <p>09:56:16 12 Q. Where were you supposed to work the</p> <p>09:56:20 13 following morning?</p> <p>09:56:22 14 A. At the Imperial Theater.</p> <p>09:56:24 15 Q. You work for Niederlander but your</p> <p>09:56:26 16 place of employment would change from theater to</p> <p>09:56:26 17 theater on any given date?</p> <p>09:56:28 18 A. Yes.</p> <p>09:56:30 19 Q. Was your truck equipped with a radio?</p> <p>09:56:34 20 A. No.</p> <p>09:56:36 21 Q. Was it equipped with a CB radio of</p> <p>09:56:36 22 any kind?</p> <p>09:56:42 23 A. No.</p> <p>09:56:44 24 Q. Now, you were traveling prior to this</p> <p>09:56:44 25 incident on West 37th Street?</p>	<p>09:57:52 1 MICHAEL R. PHILLIPS</p> <p>09:57:54 2 A. Yes.</p> <p>09:57:56 3 Q. Did your truck have lights, yes?</p> <p>09:57:56 4 A. Yes.</p> <p>09:57:56 5 Q. Were these lights on?</p> <p>09:58:00 6 A. Yes.</p> <p>09:58:02 7 Q. As you approached West 37th Street</p> <p>09:58:06 8 and the intersection of Ninth Avenue, how many</p> <p>09:58:10 9 lanes of travel are there on West 37th Street?</p> <p>09:58:14 10 A. Two.</p> <p>09:58:14 11 Q. Is that in addition to lanes for</p> <p>09:58:18 12 parked vehicles?</p> <p>09:58:18 13 A. That is in addition to lanes for</p> <p>09:58:22 14 parked vehicles.</p> <p>09:58:24 15 Q. Would there be lanes for parked</p> <p>09:58:26 16 vehicles on West 37th Street both on the left and</p> <p>09:58:26 17 right side?</p> <p>09:58:28 18 A. Yes.</p> <p>09:58:30 19 Q. As you were approaching this</p> <p>09:58:34 20 intersection of Ninth Avenue while traveling on</p> <p>09:58:36 21 West 37th Street were there any cars parked in</p> <p>09:58:36 22 either the right or left lane?</p> <p>09:58:38 23 A. Yes.</p> <p>09:58:40 24 Q. Both or one?</p> <p>09:58:40 25 A. Both. There were cars on the left</p>

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09:58:40 1 MICHAEL R. PHILLIPS
 09:58:48 2 and the right.
 09:58:48 3 Q. Were both moving lanes, the two lanes
 09:58:52 4 that you described open for the flow of traffic?
 09:58:52 5 A. Yes.
 09:58:54 6 Q. Were you familiar with this
 09:58:54 7 intersection?
 09:58:56 8 A. Yes.
 09:58:58 9 Q. Is this an intersection that you
 09:59:00 10 would pass on a regular basis?
 09:59:02 11 A. Yes.
 09:59:02 12 Q. What was your intended route when you
 09:59:06 13 reached this intersection?
 09:59:10 14 A. Approaching the Lincoln Tunnel.
 09:59:12 15 Q. And that would be an approach from
 09:59:12 16 Ninth Avenue?
 09:59:14 17 A. Yes.
 09:59:18 18 Q. And that would be an approach from
 09:59:20 19 Ninth Avenue. If you got onto Ninth Avenue and
 09:59:24 20 you were going to go to the Lincoln Tunnel, where
 09:59:26 21 would you then get on to the Lincoln Tunnel?
 09:59:28 22 A. The two extreme right lanes.
 09:59:30 23 Q. How far would you travel on Ninth
 09:59:34 24 Avenue before the entrance to the Lincoln Tunnel?
 25 A. Right on Ninth Avenue right from the

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09:59:38 1 MICHAEL R. PHILLIPS
 09:59:52 2 middle before 37th Street and 36th Street.
 09:59:54 3 Q. Following this incident, did the New
 09:59:54 4 York City Police arrive?
 09:59:56 5 A. Yes.
 09:59:58 6 Q. Did you speak to the New York City
 09:59:58 7 Police?
 10:00:00 8 A. Yes.
 10:00:00 9 Q. Did you give them a written
 10:00:04 10 statement?
 10:00:04 11 A. New York City Police, no.
 10:00:06 12 Q. Did you sign a statement for the New
 10:00:12 13 York City Police?
 10:00:16 14 A. No, I don't recall. It was very
 15 confusing. I don't recall, maybe, I may have
 10:00:16 16 not.
 10:00:20 17 Q. Do you recall speaking to them?
 10:00:20 18 A. Sorry, yes, I recall speaking to
 10:00:22 19 them.
 10:00:22 20 Q. Did they ask you questions concerning
 10:00:22 21 this incident?
 10:00:24 22 A. Yes.
 10:00:26 23 Q. Did you answer those questions
 10:00:26 24 truthfully and honestly?
 25 A. To the best of my knowledge.

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10:00:30 1 MICHAEL R. PHILLIPS
 10:00:32 2 Q. And you understood that questions
 10:00:36 3 that the New York Police Department were asking
 10:00:36 4 you were in connection with their investigation
 10:00:38 5 of this incident?
 10:00:38 6 A. At times.
 10:00:40 7 Q. I'm sorry?
 10:00:42 8 A. At times I understood.
 10:00:44 9 Q. What do you mean by at times?
 10:00:44 10 A. Because I had to ask them a couple of
 10:00:46 11 times to repeat the question.
 10:00:48 12 Q. You understood why they were asking
 10:00:48 13 you questions?
 10:00:50 14 A. Yes.
 10:00:50 15 Q. It was in connection with this
 10:00:52 16 incident and the investigation that they were
 10:00:52 17 conducting?
 10:00:54 18 A. Yes.
 10:00:56 19 Q. And you were not under the influence
 10:00:56 20 of any drugs or medication?
 10:00:58 21 A. No.
 22 Q. That impaired your thinking in any
 10:01:02 23 way?
 24 A. No.
 25 (Plaintiffs Exhibit 7)

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10:01:04 1 MICHAEL R. PHILLIPS
 2 for identification, Statement.)
 10:01:10 3 Q. I show you a document marked as
 10:01:10 4 Plaintiffs Exhibit 7 and ask you if you have ever
 10:01:20 5 seen this document before today?
 10:01:42 6 MR. KAPLEN: Mr. Butler, I have a
 10:01:44 7 copy for you.
 10:01:44 8 (Witness reviewing document.)
 10:01:46 9 Q. My question to you, have you ever
 10:01:46 10 seen that document before today?
 10:01:48 11 A. Yes, I have.
 10:01:50 12 Q. When was the last time prior to
 10:01:52 13 entering into the room that you saw this
 10:01:52 14 document?
 10:01:54 15 A. I don't recall.
 10:01:54 16 Q. Did your lawyer ever show you this
 10:01:56 17 document?
 10:01:58 18 A. No.
 10:02:02 19 Q. Did anybody on behalf of your lawyer
 10:02:02 20 and anybody else representing you in this matter
 10:02:04 21 ever show you this document?
 10:02:06 22 A. No.
 10:02:06 23 Q. Anybody ever read to you the contents
 10:02:12 24 of this document?
 25 A. After I had told the policeman what

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<p>10:02:14 1 MICHAEL R. PHILLIPS</p> <p>10:02:18 2 happened, he reread it to me and that was it.</p> <p>10:02:20 3 Q. This document was dictated by you to</p> <p>10:02:22 4 the police officer?</p> <p>10:02:24 5 A. It was dictated to me by the police</p> <p>10:02:26 6 officer after I had told him.</p> <p>7 Q. You told him what happened, he wrote</p> <p>10:02:26 8 it down?</p> <p>10:02:28 9 A. Yes.</p> <p>10:02:30 10 Q. And then he read it back?</p> <p>10:02:34 11 A. Yes, he read it back to me.</p> <p>10:02:34 12 Q. After he read it back to you, did you</p> <p>10:02:36 13 then sign this document?</p> <p>10:02:38 14 A. Yes.</p> <p>10:02:38 15 Q. Is the signature on the bottom your</p> <p>10:02:40 16 signature?</p> <p>10:02:52 17 A. Yes.</p> <p>10:02:56 18 Q. Is this statement by you a truthful</p> <p>10:03:02 19 recitation of the events that took place on</p> <p>10:03:04 20 February 25th, 2007 in connection with the</p> <p>10:03:08 21 incident involving Miss Paradi?</p> <p>10:03:10 22 A. At the time of the incident it is as</p> <p>10:03:12 23 accurate as it could be.</p> <p>10:03:14 24 Q. Have things changed since then to</p> <p>25 render this document inaccurate in any way?</p>	<p>10:04:34 1 MICHAEL R. PHILLIPS</p> <p>10:04:36 2 read the statement that was read to you by the</p> <p>10:04:36 3 New York City Police Department before you signed</p> <p>10:04:38 4 this document?</p> <p>10:04:40 5 A. It was dark.</p> <p>10:04:42 6 Q. Can you read it now?</p> <p>10:04:44 7 A. Can I read it now?</p> <p>10:04:44 8 Q. Can you read it into the record for</p> <p>10:04:44 9 us?</p> <p>10:04:48 10 A. Yes.</p> <p>10:04:50 11 Q. And what you're going to read now is</p> <p>10:04:50 12 what was read to you by the police department</p> <p>10:04:52 13 before you signed this document?</p> <p>10:04:52 14 A. Yes.</p> <p>10:04:58 15 Q. Read that, please?</p> <p>10:05:00 16 A. "I was Westbound on 37th Street in</p> <p>10:05:04 17 the right lane, two cars were to my left. I was</p> <p>10:05:08 18 going to make a left turn on Ninth Avenue. The</p> <p>10:05:14 19 two cars to my left went straight on Ninth</p> <p>10:05:18 20 Avenue. At Ninth Avenue. We had the green light</p> <p>10:05:32 21 as the two cars cleared I began to make my turn</p> <p>10:05:32 22 and I didn't even see them. I heard the bang and</p> <p>10:05:32 23 stopped."</p> <p>10:05:32 24 Q. Then a place for your signature?</p> <p>25 A. Yes.</p>
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<p>10:03:18 1 MICHAEL R. PHILLIPS</p> <p>10:03:20 2 A. Yes.</p> <p>10:03:26 3 Q. What has changed?</p> <p>10:03:30 4 A. Just how things had happened and</p> <p>10:03:32 5 being confused, I was confused and very extremely</p> <p>10:03:34 6 upset that night.</p> <p>10:03:36 7 Q. What things have changed since this</p> <p>10:03:44 8 incident concerning what happened?</p> <p>10:03:44 9 A. Just mentally my mind has changed. I</p> <p>10:03:48 10 don't know. I don't know, but I don't know.</p> <p>10:03:48 11 Q. You were being truthful and honest</p> <p>10:03:50 12 then, weren't you?</p> <p>10:03:50 13 A. Yes, sir.</p> <p>10:03:54 14 Q. And you were attempting at that point</p> <p>10:03:54 15 to give a full and complete recitation of what</p> <p>10:03:56 16 happened, right?</p> <p>10:03:58 17 A. Yes.</p> <p>10:04:00 18 Q. When you gave this statement to the</p> <p>10:04:02 19 New York City Police you didn't discuss this</p> <p>10:04:02 20 incident with anybody first, right?</p> <p>10:04:12 21 A. No, sir.</p> <p>10:04:14 22 Q. Tell me at the present time what do</p> <p>10:04:22 23 you believe to be inaccurate about this</p> <p>10:04:30 24 statement? Before you answer that question, I</p> <p>25 will ask you please to do this for me. Can you</p>	<p>10:05:34 1 MICHAEL R. PHILLIPS</p> <p>10:05:34 2 Q. And you signed it at that location?</p> <p>10:05:36 3 A. Yes.</p> <p>10:05:38 4 Q. And that was signed by you after it</p> <p>10:05:44 5 was read to you by the police officer?</p> <p>10:05:48 6 A. Yes.</p> <p>10:05:48 7 Q. What about that statement do you now</p> <p>10:05:52 8 contend is inaccurate?</p> <p>10:05:54 9 A. That the second car that was making --</p> <p>10:06:00 10 that was going straight had its left blinker on</p> <p>10:06:00 11 and I had stated it also and it was not put in</p> <p>10:06:02 12 the report.</p> <p>10:06:06 13 Q. Say this again for me?</p> <p>10:06:10 14 A. The second car that was to my left</p> <p>10:06:12 15 that went straight had its left blinker on and it</p> <p>10:06:14 16 was not put into the report.</p> <p>10:06:14 17 Q. Anything else inaccurate about this</p> <p>10:06:16 18 report?</p> <p>10:06:18 19 A. Not to my knowledge right there, no.</p> <p>10:06:18 20 MR. BUTLER: The statement part of</p> <p>10:06:22 21 the report?</p> <p>10:06:22 22 MR. KAPLEN: Just what he read into</p> <p>10:06:22 23 the record.</p> <p>10:06:30 24 MR. BUTLER: Yes.</p> <p>25 Q. Now, there is then a series of</p>

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<p>10:06:36 1 MICHAEL R. PHILLIPS</p> <p>10:06:40 2 questions and written answers in some boxes under</p> <p>10:06:40 3 what you just read. Okay, do you see that on</p> <p>10:06:44 4 this statement?</p> <p>10:06:44 5 A. Yes.</p> <p>10:06:48 6 Q. Were those the answers that you gave</p> <p>10:07:04 7 to the police department at the scene?</p> <p>10:07:06 8 A. Yes.</p> <p>10:07:08 9 Q. Were those answers read to you before</p> <p>10:07:08 10 you signed the bottom of this statement?</p> <p>10:07:08 11 A. Yes.</p> <p>10:07:10 12 Q. Are those answers accurate?</p> <p>10:07:12 13 A. Yes.</p> <p>10:07:14 14 Q. Anything inaccurate about those</p> <p>10:07:14 15 answers?</p> <p>10:07:32 16 A. Not to my knowledge.</p> <p>10:07:34 17 Q. Since this incident, have you given a</p> <p>10:07:36 18 written statement to anybody else?</p> <p>10:07:36 19 A. Yes.</p> <p>10:07:38 20 Q. Who was that?</p> <p>10:07:42 21 A. My insurance company.</p> <p>10:07:42 22 Q. Anybody else in addition to that</p> <p>10:07:50 23 insurance company?</p> <p>10:07:52 24 A. Not to my knowledge.</p> <p>25 Q. Did you give one written statement --</p>	<p>10:08:58 1 MICHAEL R. PHILLIPS</p> <p>10:09:00 2 the statement that you gave at home to someone</p> <p>10:09:00 3 else?</p> <p>10:09:00 4 A. Yes.</p> <p>10:09:04 5 Q. And this statement that you gave to</p> <p>10:09:06 6 your insurance agent, was this a written</p> <p>10:09:08 7 statement that you wrote or that somebody else</p> <p>10:09:08 8 wrote and you signed?</p> <p>10:09:10 9 A. Someone else wrote and I signed.</p> <p>10:09:12 10 Q. How many pages was that statement?</p> <p>10:09:14 11 A. I don't recall.</p> <p>10:09:16 12 Q. Do you know who took that statement</p> <p>10:09:16 13 from you?</p> <p>10:09:18 14 A. Not offhand, no.</p> <p>10:09:18 15 Q. Do you know what the purpose of that</p> <p>10:09:20 16 statement was?</p> <p>10:09:24 17 A. Investigation.</p> <p>10:09:26 18 Q. When was that statement given?</p> <p>10:09:28 19 A. I don't recall.</p> <p>10:09:30 20 MR. KAPLEN: I would ask,</p> <p>10:09:32 21 Mr. Butler, for a copy of that statement.</p> <p>10:09:36 22 MR. BUTLER: I believe that that</p> <p>10:09:36 23 statement falls within both work product and the</p> <p>10:09:42 24 attorney-client privilege.</p> <p>25 Q. In addition to that statement and the</p>
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<p>10:07:56 1 MICHAEL R. PHILLIPS</p> <p>10:07:58 2 A. Sorry, except for the highway patrol</p> <p>10:08:00 3 policeman.</p> <p>10:08:04 4 Q. That is what we just read?</p> <p>5 A. This was highway patrol or the New</p> <p>10:08:06 6 York City Police.</p> <p>10:08:08 7 Q. Did you give more than one statement?</p> <p>10:08:10 8 A. New York City Police, there is an</p> <p>10:08:12 9 accident report.</p> <p>10:08:14 10 MR. BUTLER: The question is did you</p> <p>10:08:18 11 give a written report.</p> <p>10:08:20 12 Q. In addition -- let's stop. At the</p> <p>10:08:22 13 scene, in addition to signing this statement, did</p> <p>10:08:24 14 you sign any other statement?</p> <p>10:08:28 15 A. Yes.</p> <p>10:08:28 16 Q. Was that one statement or more than</p> <p>10:08:32 17 one statement?</p> <p>10:08:36 18 A. I don't remember.</p> <p>10:08:40 19 Q. The additional statement that you</p> <p>10:08:42 20 signed at the scene, did that have any different</p> <p>10:08:42 21 information other than what you just read into</p> <p>10:08:52 22 the record?</p> <p>10:08:54 23 A. The additional information that I</p> <p>10:08:58 24 signed was for my insurance provider at home.</p> <p>25 Q. So you gave additional information in</p>	<p>10:09:44 1 MICHAEL R. PHILLIPS</p> <p>10:09:46 2 statements that you gave at the scene to the</p> <p>10:09:48 3 police department, have you ever given any</p> <p>10:09:48 4 written statements to anybody else?</p> <p>10:09:52 5 A. No.</p> <p>10:09:52 6 Q. Have you ever given any taped</p> <p>10:09:52 7 statements to anybody else?</p> <p>10:09:58 8 A. No.</p> <p>10:10:02 9 Q. Have you ever revisited this location</p> <p>10:10:04 10 for the purposes of looking and taking a walk</p> <p>10:10:04 11 around or anything else in connection with this</p> <p>10:10:06 12 incident?</p> <p>10:10:10 13 A. No.</p> <p>10:10:12 14 Q. Has anybody ever shown you</p> <p>10:10:14 15 photographers of this location?</p> <p>16 A. Of this location?</p> <p>17 Q. Yes.</p> <p>10:10:14 18 A. Yes.</p> <p>10:10:16 19 Q. Who was that?</p> <p>10:10:22 20 A. My insurance provider who took the</p> <p>10:10:22 21 statement. Just the pictures themselves of the</p> <p>10:10:24 22 location.</p> <p>10:10:26 23 Q. Did he ask you to mark those pictures</p> <p>10:10:26 24 in any way to show him different things?</p> <p>25 A. No.</p>

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<p>10:10:30 1 MICHAEL R. PHILLIPS</p> <p>10:10:32 2 Q. In addition to that individual from</p> <p>10:10:36 3 the insurance company showing you any</p> <p>10:10:36 4 photographs, has anybody else shown you any</p> <p>10:10:36 5 photographs?</p> <p>10:10:40 6 A. No.</p> <p>10:10:42 7 Q. Have you ever seen photographs taken</p> <p>10:10:42 8 by the New York City Police Department?</p> <p>10:10:44 9 A. No.</p> <p>10:10:48 10 Q. Have you ever seen any photographs</p> <p>10:10:50 11 that were provided to your attorney by my office</p> <p>10:10:52 12 concerning this location?</p> <p>10:11:14 13 A. No.</p> <p>10:11:14 14 Q. At the scene of this incident, did</p> <p>10:11:14 15 you speak to any witnesses?</p> <p>10:11:18 16 A. No.</p> <p>10:11:18 17 Q. Do you know if there are any</p> <p>10:11:18 18 witnesses?</p> <p>10:11:22 19 A. Not to my knowledge.</p> <p>10:11:24 20 Q. In addition to speaking to police</p> <p>10:11:24 21 officers at the scene, did you speak to anybody</p> <p>10:11:24 22 else?</p> <p>10:11:46 23 A. No.</p> <p>10:11:48 24 Q. Now, did your truck strike Sabina</p> <p>25 Paradi?</p>	<p>10:12:40 1 MICHAEL R. PHILLIPS</p> <p>10:12:42 2 A. Yes.</p> <p>10:12:46 3 Q. Was your visibility obstructed in any</p> <p>10:12:48 4 way while you were making that turn from West</p> <p>10:12:48 5 37th Street on to Ninth Avenue?</p> <p>10:13:02 6 A. Just the weather conditions.</p> <p>10:13:04 7 Q. Were you able to see clearly through</p> <p>10:13:04 8 your front windshield with the windshield wipers</p> <p>10:13:04 9 operating?</p> <p>10:13:04 10 A. Yes.</p> <p>10:13:04 11 Q. Your visibility of the curbs weren't</p> <p>10:13:04 12 obstructed in any way?</p> <p>10:13:06 13 A. Besides the slush and ice.</p> <p>10:13:06 14 Q. Was it just the slush and ice?</p> <p>10:13:10 15 A. Yes.</p> <p>10:13:14 16 Q. Was your visibility of the crosswalk</p> <p>10:13:16 17 itself where people would be walking obstructed</p> <p>10:13:18 18 in any way? And I don't mean any slush or snow</p> <p>10:13:20 19 on the ground. You could see clearly?</p> <p>10:13:30 20 A. I don't recall. I don't remember.</p> <p>10:13:34 21 Q. At the time that you heard this</p> <p>10:13:36 22 impact with the left front fender of your</p> <p>10:13:38 23 vehicle, what speed were you traveling at?</p> <p>10:13:42 24 A. Approximately three miles an hour.</p> <p>25 Q. Had you completed your turn yet?</p>
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<p>10:11:48 1 MICHAEL R. PHILLIPS</p> <p>10:11:52 2 A. I don't know.</p> <p>10:11:54 3 Q. Did you hear any sound indicating</p> <p>10:11:56 4 that your vehicle made contact with an</p> <p>10:11:58 5 individual?</p> <p>10:12:02 6 A. I heard a loud bang.</p> <p>10:12:02 7 Q. Was that bang on the right side of</p> <p>10:12:02 8 your truck or left side?</p> <p>10:12:04 9 A. Left side.</p> <p>10:12:06 10 Q. Where on the left side was that bang?</p> <p>10:12:12 11 A. Left front fender.</p> <p>10:12:16 12 Q. Before you heard that bang did you</p> <p>10:12:18 13 see any pedestrians crossing the intersection of</p> <p>10:12:18 14 Ninth Avenue and West 37th Street?</p> <p>10:12:22 15 A. No.</p> <p>10:12:24 16 Q. Did you see any pedestrians standing</p> <p>10:12:24 17 on any of the corners waiting to cross?</p> <p>10:12:26 18 A. No.</p> <p>10:12:30 19 Q. Was your visibility of the</p> <p>10:12:34 20 intersection of West 37th Street and Ninth Avenue</p> <p>10:12:38 21 obstructed in any way as you were making your</p> <p>10:12:38 22 turn -- were you making a turn from West 37th</p> <p>10:12:38 23 Street on to Ninth Avenue?</p> <p>10:12:40 24 A. Yes.</p> <p>25 Q. And that would be a left turn?</p>	<p>10:13:42 1 MICHAEL R. PHILLIPS</p> <p>10:13:46 2 A. No.</p> <p>10:13:46 3 Q. Where on the roadway was your</p> <p>10:13:50 4 vehicle?</p> <p>5 A. I don't remember. I don't know. I</p> <p>10:13:54 6 don't know.</p> <p>10:13:56 7 Q. Was it on anyway -- let's do this</p> <p>10:14:00 8 first. I'm going to show you some photographs</p> <p>10:14:04 9 that we have marked Plaintiff's Exhibit s 1</p> <p>10:14:08 10 through 6. I ask you to look at these</p> <p>10:14:10 11 photographs first and then I will ask you some</p> <p>12 questions about them. Okay?</p> <p>10:14:10 13 (Plaintiff's Exhibit 1-6</p> <p>10:14:16 14 for identification, Photographs.).</p> <p>10:14:26 15 (Witness reviewing document.)</p> <p>10:14:26 16 MR. KAPLEN: Do you want to look at</p> <p>10:14:28 17 them, Mr. Butler?</p> <p>10:14:36 18 MR. BUTLER: Please.</p> <p>10:14:38 19 MR. KAPLEN: Those are enlargements</p> <p>10:14:38 20 of the photographs that I previously provided to</p> <p>10:14:56 21 you.</p> <p>10:14:58 22 Q. Could you just flip through those</p> <p>10:15:38 23 pictures, and I'm going to be asking you</p> <p>10:15:42 24 questions about these photographs. I don't want</p> <p>25 you to think I'm crazy, but we have to do this in</p>

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10:15:44 1 MICHAEL R. PHILLIPS
 10:15:46 2 a certain way under our legal proceedings. I
 10:15:48 3 show you what is marked as Plaintiff's Exhibit 1
 10:15:50 4 for identification and ask you if you recognize
 10:15:52 5 this, what is depicted on that photo?
 10:15:54 6 A. Yes.
 10:15:56 7 Q. Can you tell us, please?
 10:16:00 8 A. West 37th Street and Ninth Avenue.
 10:16:02 9 Q. Is that a fair and accurate depiction
 10:16:04 10 of this location as it existed at the time of
 10:16:04 11 this incident on February 25th?
 10:16:06 12 A. No.
 10:16:10 13 Q. In what way is it different?
 10:16:12 14 A. The weather, it was snowing, roads
 10:16:14 15 were not clear and it was dark.
 10:16:16 16 Q. Other than that, is the geographic
 10:16:20 17 depiction accurate?
 10:16:26 18 A. Yes, geographically, yes.
 10:16:28 19 Q. Can you tell us Plaintiff's Exhibit 2
 10:16:30 20 except for the weather conditions and the fact
 10:16:34 21 that this was taken in the daytime rather than
 10:16:38 22 evening is also a fair and accurate depiction of
 10:16:40 23 this location of Ninth Avenue and West 37th
 10:16:54 24 Street as it existed on February 25th of 2007?
 25 A. Yes, whatever the road conditions

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10:16:56 1 MICHAEL R. PHILLIPS
 10:16:58 2 there are, I don't know.
 10:17:00 3 Q. Understanding that all of those
 10:17:04 4 pictures that I'm going to show you were taken in
 10:17:06 5 daylight and understanding that it was snowing
 10:17:10 6 that night, I will ask you to look at each one of
 10:17:14 7 these to tell me if each one of these is a fair
 10:17:18 8 and accurate depiction of this intersection as it
 10:17:20 9 appeared on February 25th. Exhibit 3, fair and
 10:17:24 10 accurate depiction?
 10:17:26 11 A. Yes.
 10:17:30 12 Q. Exhibit 4?
 10:17:32 13 A. Yes.
 10:17:42 14 Q. Exhibit 5?
 10:17:42 15 A. Yes.
 10:17:50 16 Q. Exhibit 6?
 10:17:56 17 A. Yes.
 10:18:00 18 Q. Now, looking at Exhibit No. 6, we are
 10:18:02 19 looking at a view of Ninth Avenue going
 10:18:02 20 southbound?
 10:18:06 21 A. Yes.
 10:18:06 22 Q. And that would be the street that you
 10:18:08 23 would be turning on to?
 10:18:16 24 A. Yes, sir.
 25 Q. Looking at this photo, Exhibit 6, can

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10:18:22 1 MICHAEL R. PHILLIPS
 10:18:26 2 you tell us, please, or point to me, please,
 10:18:36 3 where your vehicle was when you heard this
 10:18:42 4 sound? And if you could put a X at that spot.
 5 A. I don't know. I don't know. I don't
 10:18:52 6 know.
 10:18:52 7 Q. You were in the process of making the
 10:18:54 8 turn?
 10:18:56 9 A. Yes.
 10:19:04 10 Q. And Ninth Avenue at this location has
 10:19:06 11 five lanes for moving traffic, okay. Two of
 10:19:10 12 those being on the right and those would be the
 10:19:12 13 lanes for turning into the Lincoln Tunnel?
 10:19:14 14 A. Yes.
 10:19:18 15 Q. Was it your intent to get into one of
 10:19:18 16 these two right lanes as you were making your
 10:19:24 17 turn?
 10:19:28 18 A. Yes.
 10:19:32 19 Q. When you made your left turn on to
 10:19:34 20 Ninth Avenue, did you get on to Ninth Avenue in
 10:19:36 21 any location other than these two right lanes?
 10:19:38 22 A. I don't know.
 10:19:40 23 Q. I'm asking you --
 10:19:44 24 A. I don't know. I don't know. When I
 25 turned left I started approaching left and I

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10:19:46 1 MICHAEL R. PHILLIPS
 10:19:48 2 heard the bang. I don't know what position my
 10:19:52 3 truck was in, whether it was in the two right
 10:19:52 4 lanes approaching the Lincoln Tunnel or in the
 10:19:54 5 middle approach, I don't know.
 10:19:58 6 Q. You could have been in the third lane
 10:19:58 7 or fourth lane or any lane for that matter, you
 10:20:00 8 just don't know?
 10:20:14 9 A. I don't know.
 10:20:16 10 Q. As you were making that turn, did you
 10:20:24 11 observe any pedestrians standing in the location
 10:20:26 12 where the H&R Block office is located?
 10:20:26 13 A. I don't know. I did not see anyone
 10:20:30 14 there.
 10:20:32 15 Q. And -- I'm going to show you --
 10:20:32 16 A. If there was anyone there, I don't
 10:20:34 17 know.
 10:20:40 18 Q. I show you Exhibit 3, and would that
 10:20:42 19 be the view as you were making your left turn?
 10:20:46 20 A. Yes.
 10:20:46 21 Q. And again you see the H&R Block
 10:20:48 22 location?
 10:20:50 23 A. Yes.
 10:20:54 24 Q. And that would be on the side of the
 25 street where the two right turning lanes would be

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<p>10:20:54 1 MICHAEL R. PHILLIPS</p> <p>10:20:56 2 for the tunnel?</p> <p>10:20:58 3 A. Yes.</p> <p>10:21:00 4 Q. And as you were making your turn, do</p> <p>10:21:00 5 you know if any pedestrians were standing on that</p> <p>10:21:02 6 corner?</p> <p>10:21:04 7 A. I don't know.</p> <p>10:21:10 8 Q. Before you started making your turn,</p> <p>10:21:12 9 did you see any pedestrians crossing Ninth Avenue</p> <p>10:21:12 10 either westbound or eastbound?</p> <p>10:21:14 11 A. No.</p> <p>10:21:14 12 Q. No, you didn't or no, you don't</p> <p>10:21:16 13 recall?</p> <p>10:21:26 14 A. No, I did not see anyone crossing.</p> <p>10:21:30 15 Q. Plaintiff's Exhibit 4, is that</p> <p>10:21:34 16 another view of West 37th Street in the direction</p> <p>10:21:36 17 that you were traveling as you were approaching</p> <p>10:21:38 18 this intersection of Ninth Avenue?</p> <p>10:21:48 19 A. Yes, it is.</p> <p>10:21:52 20 Q. Is Plaintiff's Exhibit 1 another view</p> <p>10:21:54 21 of the direction that you were traveling on West</p> <p>10:21:56 22 37th Street as you were approaching Ninth Avenue?</p> <p>10:22:00 23 A. Yes.</p> <p>10:22:04 24 Q. And Exhibit 2 would be the view of</p> <p>10:22:04 25 someone who was standing by the H&R Block</p>	<p>10:23:42 1 MICHAEL R. PHILLIPS</p> <p>10:23:44 2 A. I saw a young woman laying down on</p> <p>10:23:46 3 Ninth Avenue.</p> <p>10:23:48 4 Q. Where was she in relationship to this</p> <p>10:23:48 5 crosswalk?</p> <p>10:23:50 6 A. I don't know.</p> <p>10:23:50 7 Q. Was she in the crosswalk?</p> <p>10:23:52 8 A. I don't know.</p> <p>10:23:54 9 Q. Why don't you know?</p> <p>10:23:58 10 A. Because of the street conditions, the</p> <p>10:23:58 11 road conditions, I don't know. Slush. I don't</p> <p>10:24:00 12 know.</p> <p>10:24:02 13 Q. Did this happen in the middle of the</p> <p>10:24:04 14 street somewhere or near somewhere in the</p> <p>10:24:06 15 vicinity of the crosswalk?</p> <p>10:24:06 16 A. It could have been in the vicinity.</p> <p>10:24:12 17 I don't know.</p> <p>10:24:14 18 Q. How far in your turn were you when</p> <p>10:24:22 19 you heard this sound?</p> <p>10:24:24 20 A. Maybe three quarters of the way in.</p> <p>10:24:28 21 Maybe.</p> <p>10:24:30 22 Q. Was anybody by this young woman that</p> <p>10:24:30 23 you saw on the ground?</p> <p>10:24:30 24 A. Yes.</p> <p>10:24:30 25 Q. Who was that?</p>
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<p>10:22:08 1 MICHAEL R. PHILLIPS</p> <p>10:22:18 2 location looking on down West 37th Street?</p> <p>10:22:20 3 A. Yes.</p> <p>10:22:24 4 Q. The sound that you heard, I'm sorry,</p> <p>10:22:24 5 was that a loud sound, light sound, what kind of</p> <p>10:22:24 6 sound?</p> <p>10:22:28 7 A. Loud.</p> <p>10:22:28 8 Q. Can you mimic that kind of sound for</p> <p>10:22:28 9 us?</p> <p>10:22:30 10 A. No.</p> <p>10:22:32 11 Q. Did you understand what that sound</p> <p>10:22:36 12 was after you heard it?</p> <p>10:22:42 13 A. That either someone hit my truck with</p> <p>10:22:44 14 a car or someone's hands laid on my car, my truck</p> <p>10:22:46 15 fender.</p> <p>10:22:48 16 Q. Just prior to hearing that sound, did</p> <p>10:22:50 17 you see anyone crossing in front of your truck</p> <p>10:22:52 18 either from the right or from the left?</p> <p>10:23:26 19 A. No.</p> <p>10:23:28 20 Q. After you heard that sound, what did</p> <p>10:23:30 21 you do in regard to the operation of your truck?</p> <p>10:23:32 22 A. I stopped it immediately. Put the</p> <p>10:23:34 23 emergency brake on and got out of my truck to see</p> <p>10:23:36 24 what the noise was from.</p> <p>10:23:36 25 Q. And what did you see?</p>	<p>10:24:32 1 MICHAEL R. PHILLIPS</p> <p>10:24:34 2 A. A young man.</p> <p>10:24:34 3 Q. And did you ever speak to that young</p> <p>10:24:36 4 man?</p> <p>10:24:40 5 A. No.</p> <p>10:24:40 6 Q. Did you have any words to say with</p> <p>10:24:44 7 him at all?</p> <p>10:24:44 8 A. No, my reaction was oh, my God, what</p> <p>10:24:48 9 happened here. That was it.</p> <p>10:24:50 10 Q. This young lady on the ground, what</p> <p>10:24:58 11 did you observe about her conditions?</p> <p>10:25:00 12 A. I didn't. She was lying there and</p> <p>10:25:02 13 there were a lot of people and I didn't. I was</p> <p>10:25:04 14 asked to step away.</p> <p>10:25:04 15 Q. There were a lot people as soon as</p> <p>10:25:10 16 you got out of your truck?</p> <p>10:25:14 17 A. The police van showed up, with plain</p> <p>10:25:14 18 clothes police, New York City Police right there</p> <p>10:25:16 19 on the spot.</p> <p>10:25:16 20 Q. Before or after you got out of your</p> <p>10:25:18 21 truck?</p> <p>10:25:18 22 A. After.</p> <p>10:25:22 23 Q. I'm asking when you got out of your</p> <p>10:25:24 24 truck and you walked around and saw this girl on</p> <p>10:25:24 25 the ground, in addition to the young man that was</p>

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<p>10:25:30 1 MICHAEL R. PHILLIPS</p> <p>10:25:30 2 with her, was there anybody else there at that</p> <p>10:25:30 3 moment?</p> <p>10:25:36 4 A. I don't know.</p> <p>10:25:36 5 Q. How soon did the police van show up?</p> <p>10:25:40 6 A. Within seconds.</p> <p>10:25:42 7 Q. Do you know who called the police van</p> <p>10:25:44 8 or if anybody called them?</p> <p>10:25:46 9 A. I don't believe anybody did. I think</p> <p>10:25:48 10 it was coincidence that they were there.</p> <p>10:25:48 11 Q. Did you observe this girl on the</p> <p>10:25:48 12 ground moving in any way?</p> <p>10:25:52 13 A. I did not.</p> <p>10:25:52 14 Q. Did you hear any sounds?</p> <p>10:25:56 15 A. No.</p> <p>10:25:58 16 Q. After you observed this girl on the</p> <p>10:26:02 17 ground, what if anything did you do next?</p> <p>10:26:04 18 A. I was asked to step to the sidewalk</p> <p>10:26:06 19 away from the incident.</p> <p>10:26:06 20 Q. Who asked you to do that?</p> <p>10:26:08 21 A. The New York City Police.</p> <p>10:26:08 22 Q. Did you do that?</p> <p>10:26:10 23 A. Yes.</p> <p>10:26:10 24 Q. Did you ever return to observe this</p> <p>25 girl?</p>	<p>10:28:12 1 MICHAEL R. PHILLIPS</p> <p>10:28:14 2 Q. Is there a traffic light controlling</p> <p>3 this intersection of Ninth Avenue and 37th</p> <p>10:28:16 4 Street?</p> <p>10:28:18 5 A. Yes.</p> <p>10:28:24 6 Q. As you approached this intersection</p> <p>10:28:24 7 in the direction that you were proceeding on West</p> <p>10:28:26 8 37th Street, that would be westbound?</p> <p>10:28:28 9 A. Yes.</p> <p>10:28:28 10 Q. Did you observe the color of the</p> <p>10:28:28 11 traffic signal?</p> <p>10:28:30 12 A. Yes.</p> <p>10:28:32 13 Q. What color was it?</p> <p>10:28:36 14 A. Red.</p> <p>10:28:38 15 Q. Did you stop your vehicle because of</p> <p>10:28:40 16 this red signal before you proceeded to make your</p> <p>10:28:40 17 turn?</p> <p>10:28:44 18 A. Yes.</p> <p>10:28:46 19 Q. When you stopped your vehicle, were</p> <p>10:28:46 20 there any cars in front of you?</p> <p>10:28:50 21 A. No.</p> <p>10:28:54 22 Q. And you would be the first car then</p> <p>10:28:54 23 at this intersection of West 37th Street and</p> <p>10:29:02 24 Ninth Avenue?</p> <p>25 A. In the right lane, yes.</p>
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<p>10:26:10 1 MICHAEL R. PHILLIPS</p> <p>10:26:14 2 A. No.</p> <p>10:26:16 3 Q. Did you ever speak to her or the</p> <p>10:26:16 4 young man that she was with?</p> <p>10:27:00 5 A. No.</p> <p>10:27:02 6 Q. Did you observe whether this girl</p> <p>10:27:06 7 that you saw on the ground had any bags or</p> <p>8 packages, umbrellas, anything else with her at</p> <p>10:27:08 9 that time?</p> <p>10:27:10 10 A. I don't know. I did not.</p> <p>10:27:10 11 Q. Do you know if the young man that she</p> <p>10:27:14 12 was with did?</p> <p>10:27:20 13 A. All I know is that he had very dark</p> <p>10:27:24 14 clothes on, what I had seen of him when he stood</p> <p>10:27:26 15 up overlooking his friend and I seen an umbrella</p> <p>10:27:28 16 behind him in the middle of Ninth Avenue.</p> <p>10:27:30 17 Q. Did you observe the kind of clothes</p> <p>10:27:32 18 that the girl was wearing?</p> <p>10:27:34 19 A. She had light slacks on and I don't</p> <p>10:27:40 20 know what she was wearing on top because they</p> <p>10:28:04 21 were trying to keep her warm with other coats.</p> <p>10:28:04 22 Q. Now, while you were traveling on West</p> <p>10:28:08 23 37th Street approaching this intersection of</p> <p>10:28:10 24 Ninth Avenue, did you observe a traffic light?</p> <p>25 A. Yes.</p>	<p>10:29:04 1 MICHAEL R. PHILLIPS</p> <p>10:29:04 2 Q. You were intending to make a left</p> <p>10:29:04 3 turn from the right lane?</p> <p>10:29:06 4 A. Yes.</p> <p>10:29:10 5 Q. How long were you stopped there with</p> <p>10:29:10 6 the light being red before it turned to green?</p> <p>10:29:12 7 A. I don't know.</p> <p>10:29:14 8 Q. When you were stopped in this</p> <p>10:29:16 9 right-hand lane of West 37th Street at the</p> <p>10:29:18 10 intersection of Ninth Avenue, were there any cars</p> <p>10:29:20 11 in the lane immediately to your left?</p> <p>10:29:22 12 A. Yes.</p> <p>10:29:22 13 Q. And they were also stopped at this</p> <p>10:29:22 14 light?</p> <p>10:29:24 15 A. Yes.</p> <p>10:29:26 16 Q. Were there any cars behind you in the</p> <p>10:29:26 17 right lane?</p> <p>10:29:32 18 A. I don't know.</p> <p>10:29:36 19 Q. Now, if you were intending to make a</p> <p>10:29:38 20 left turn on to Ninth Avenue, can you tell me why</p> <p>10:29:42 21 you were in the right-hand lane as opposed to</p> <p>10:29:44 22 being in the left-hand lane while you were</p> <p>10:29:46 23 stopped at this intersection?</p> <p>10:29:50 24 A. Yes. The two cars that were to my</p> <p>25 left, one car, the first car proceeded across</p>

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<p>10:29:54 1 MICHAEL R. PHILLIPS</p> <p>10:29:58 2 Ninth Avenue, the second car had its left blinker</p> <p>10:30:00 3 on proceeding to go in the Lincoln Tunnel, I</p> <p>10:30:02 4 presume and I proceeded to follow him, but that</p> <p>10:30:04 5 car decided to go straight.</p> <p>10:30:08 6 Q. That is not the question I'm asking.</p> <p>10:30:12 7 A. It's a common of traffic flow.</p> <p>10:30:12 8 Q. You understand, sir, that to make a</p> <p>10:30:14 9 left turn --</p> <p>10:30:16 10 A. Yes.</p> <p>10:30:20 11 Q. -- from a street within the City of</p> <p>10:30:24 12 New York you should be in the left lane of the</p> <p>10:30:26 13 flow of traffic, do you understand that?</p> <p>10:30:26 14 MR. BUTLER: Note my objection as</p> <p>10:30:28 15 far as that question.</p> <p>10:30:36 16 Q. You can answer that question?</p> <p>10:30:36 17 A. Yes.</p> <p>10:30:38 18 Q. You understood that to be the law?</p> <p>10:30:40 19 A. No.</p> <p>10:30:42 20 MR. BUTLER: Note my objection to</p> <p>10:30:42 21 any questions along those lines.</p> <p>10:30:48 22 Q. Understanding that you were supposed</p> <p>10:30:50 23 to be in the left-hand lane of West 37th Street</p> <p>10:30:52 24 to make the left turn, why were you not in the</p> <p>25 left lane but in the right lane?</p>	<p>10:32:08 1 MICHAEL R. PHILLIPS</p> <p>10:32:08 2 side of West 37th Street or the southbound side</p> <p>10:32:10 3 of West 37th Street?</p> <p>10:32:18 4 A. I did not see any, no.</p> <p>10:32:18 5 Q. Did you see any pedestrians walking</p> <p>10:32:18 6 in that area that night?</p> <p>10:32:30 7 A. I don't remember.</p> <p>10:32:34 8 Q. After the light turned green the car</p> <p>10:32:34 9 that was immediately to your left, what did that</p> <p>10:32:38 10 vehicle do?</p> <p>10:32:38 11 A. It went straight across Ninth Avenue.</p> <p>10:32:42 12 Q. Did that vehicle turn?</p> <p>10:32:42 13 A. The other vehicle did not turn.</p> <p>10:32:44 14 Q. The first car?</p> <p>10:32:46 15 A. Did not turn, it went straight.</p> <p>10:32:48 16 Q. Did that first vehicle -- was this a</p> <p>10:32:48 17 car or truck?</p> <p>10:32:50 18 A. It was a car.</p> <p>10:32:52 19 Q. Did that first vehicle have its</p> <p>10:32:52 20 signal light on?</p> <p>10:33:02 21 A. No.</p> <p>10:33:06 22 Q. Did you start moving at the same time</p> <p>10:33:08 23 as this first vehicle -- that this first vehicle</p> <p>10:33:08 24 to your left after the light turned green?</p> <p>25 A. No.</p>
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<p>10:30:54 1 MICHAEL R. PHILLIPS</p> <p>10:30:56 2 MR. BUTLER: Note my objection to</p> <p>10:31:00 3 the form of the question. You may answer it.</p> <p>10:31:06 4 A. Because of the weather conditions.</p> <p>10:31:08 5 Safer to drive a wide turn instead of a narrow</p> <p>10:31:08 6 short turn to get across Ninth Avenue because of</p> <p>10:31:10 7 the weather conditions.</p> <p>10:31:14 8 Q. What about the weather conditions</p> <p>10:31:14 9 made it safer the way that you intended to make</p> <p>10:31:16 10 the turn?</p> <p>10:31:20 11 A. So my truck would not slip around</p> <p>10:31:24 12 instead of making a sharp left turn into and make</p> <p>10:31:26 13 a quick turn into the Lincoln Tunnel. It's a</p> <p>10:31:30 14 nice wide turn so the rear end of my truck</p> <p>10:31:30 15 wouldn't slide out because of the road</p> <p>10:31:32 16 conditions.</p> <p>10:31:38 17 Q. While you were stopped at this</p> <p>10:31:42 18 traffic light, did anybody cross in front of your</p> <p>10:31:46 19 vehicle crossing West 37th Street either going</p> <p>10:31:46 20 northbound or southbound?</p> <p>10:31:52 21 A. I don't know. I don't recall.</p> <p>10:31:54 22 Q. While you stopped at this traffic</p> <p>10:32:00 23 light, did you observe any pedestrians crossing</p> <p>10:32:04 24 West 37th Street on either the northbound --</p> <p>25 crossing Ninth Avenue either on the northbound</p>	<p>10:33:12 1 MICHAEL R. PHILLIPS</p> <p>10:33:12 2 Q. Who moved first?</p> <p>10:33:14 3 A. The car moved first.</p> <p>10:33:16 4 Q. The car to your left?</p> <p>10:33:20 5 A. Yes.</p> <p>10:33:22 6 Q. And how far did that car get through</p> <p>10:33:28 7 this intersection before you started to move?</p> <p>10:33:30 8 A. Approximately four feet.</p> <p>10:33:30 9 Q. And then you started to move?</p> <p>10:33:32 10 A. Yes.</p> <p>10:33:34 11 Q. And then there is a car behind that</p> <p>10:33:34 12 car on your left?</p> <p>10:33:36 13 A. Yes.</p> <p>10:33:36 14 Q. Was that a car or truck?</p> <p>10:33:38 15 A. It was a car.</p> <p>10:33:40 16 Q. And did you see that car start to</p> <p>10:33:40 17 move before you started to move?</p> <p>10:33:42 18 A. Yes.</p> <p>10:33:44 19 Q. And did that car have its signal on?</p> <p>10:33:46 20 A. Yes.</p> <p>10:33:46 21 Q. Was that its left signal on?</p> <p>10:33:48 22 A. Yes.</p> <p>10:33:48 23 Q. Did that car turn on to Ninth Avenue?</p> <p>10:33:54 24 A. No.</p> <p>25 Q. Did you wait until that car proceeded</p>

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10:33:56 1 MICHAEL R. PHILLIPS
 10:33:56 2 past you before you began to make your turn?
 10:33:58 3 A. Yes.
 10:34:00 4 Q. And as that car was proceeding past
 10:34:00 5 you, were you moving or stopped?
 10:34:06 6 A. I was stopped.
 10:34:08 7 Q. What was your intent at being stopped
 10:34:10 8 at that moment?
 10:34:10 9 A. Waiting for the cars to clear so
 10:34:12 10 there would be no accidents.
 10:34:16 11 Q. Waiting for both of these cars on
 10:34:18 12 your left to proceed in front of you and then you
 10:34:20 13 would make this left turn behind them?
 10:34:24 14 A. Yes.
 10:34:24 15 Q. And did they both proceed in front of
 10:34:28 16 you?
 10:34:32 17 A. Yes.
 10:34:36 18 Q. Did they both clear the intersection
 10:34:38 19 of Ninth Avenue and West 37th Street before you
 10:34:38 20 began to make your left turn?
 10:34:42 21 A. No.
 10:34:42 22 Q. Did either one of these vehicles --
 10:34:44 23 A. I don't recall.
 10:34:50 24 Q. Where was this second vehicle in
 25 relationship to this intersection when you began

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10:34:50 1 MICHAEL R. PHILLIPS
 10:34:56 2 to work your left turn?
 10:35:04 3 A. I don't know. I don't know.
 10:35:08 4 Q. If we look at the roadway of Ninth
 10:35:12 5 Avenue and West 37th Street, Plaintiff's Exhibit
 10:35:16 6 6, can you point to us where the second vehicle
 10:35:16 7 would have been when you began to make your left
 10:35:24 8 turn?
 10:35:28 9 A. I don't know. I don't know.
 10:35:28 10 Q. And that would be the same by looking
 10:35:34 11 at any of the pictures?
 12 A. Yes, it would be. Just, I don't
 10:35:42 13 know.
 10:35:46 14 Q. Looking at Plaintiff's Exhibit 1,
 10:35:48 15 that would be West 37th Street in the direction
 10:35:48 16 that you were traveling?
 10:35:50 17 A. Yes.
 10:35:50 18 Q. And that shows the two lanes of
 10:35:52 19 traffic?
 10:35:52 20 A. Yes.
 10:35:54 21 Q. That we just discussed?
 10:35:56 22 A. Yes.
 10:35:58 23 Q. Could you put a checkmark in the lane
 10:36:00 24 that your vehicle was in while you were stopped
 25 at this traffic light?

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10:36:00 1 MICHAEL R. PHILLIPS
 10:36:08 2 A. Yes.
 10:36:10 3 (Witness complies.)
 10:36:12 4 Q. You put an X there?
 10:36:12 5 A. Yes.
 10:36:14 6 Q. I asked you --
 10:36:16 7 A. Is that what you asked me to do?
 10:36:20 8 Q. I asked you to make a checkmark, but
 10:36:20 9 I need the record to reflect what you put. You
 10:36:20 10 put an X there?
 10:36:22 11 A. Yes.
 10:36:24 12 Q. And that depicts the location that
 10:36:24 13 you were stopped at this light?
 10:36:26 14 A. Yes.
 10:36:26 15 Q. And that is on Plaintiff's Exhibit 1?
 10:36:28 16 A. Yes.
 10:36:30 17 MR. BUTLER: It depicts the lane.
 10:36:32 18 MR. KAPLEN: The lane, okay.
 10:36:38 19 Q. Did you understand that when this
 10:36:40 20 light turned green for the flow of traffic on
 10:36:44 21 West 37th Street, that if there were any
 10:36:48 22 pedestrians waiting to cross Ninth Avenue they
 10:36:48 23 would also have a green signal in their favor?
 10:36:52 24 A. Yes.
 25 Q. And you understand that pedestrians

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10:36:54 1 MICHAEL R. PHILLIPS
 10:36:56 2 crossing Ninth Avenue would have the right of way
 10:36:56 3 over your vehicle?
 10:36:58 4 A. Yes.
 10:37:02 5 Q. And you understand that it was your
 10:37:06 6 obligation to yield to those pedestrians who were
 10:37:10 7 crossing Ninth Avenue in either going westbound
 10:37:14 8 or eastbound, you had an obligation to yield the
 10:37:16 9 right of way to those pedestrians?
 10:37:18 10 A. Yes.
 10:37:20 11 Q. While you were in the process of
 10:37:24 12 making this left turn, did you anticipate that
 10:37:26 13 there might be any pedestrians crossing Ninth
 10:37:28 14 Avenue at this location?
 10:37:30 15 A. Yes, I stopped when the second car
 10:37:30 16 proceeded to go forward and I didn't see anyone
 10:37:34 17 in the crosswalks at all.
 10:37:36 18 Q. Did you look left as well as right.
 10:37:38 19 A. I looked left, right, forward.
 10:37:40 20 Q. In addition to walking in the
 10:37:40 21 crosswalk itself did you look on the curb?
 10:37:42 22 A. No.
 10:37:44 23 Q. So you don't know if there were any
 10:37:44 24 pedestrians on the curb?
 25 A. I have no idea, I don't know.

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<p>10:37:48 1 MICHAEL R. PHILLIPS</p> <p>10:37:50 2 Q. As you were making your turn, did you</p> <p>10:37:52 3 continue to look to see if there were any</p> <p>10:37:56 4 pedestrians in the crosswalk either crossing</p> <p>10:37:58 5 Ninth Avenue westbound or crossing Ninth Avenue</p> <p>10:37:58 6 crossing eastbound?</p> <p>10:38:00 7 A. I didn't see any.</p> <p>10:38:00 8 Q. You looked?</p> <p>10:38:02 9 A. I looked.</p> <p>10:38:02 10 Q. And you didn't see anybody crossing</p> <p>10:38:02 11 either way?</p> <p>10:38:06 12 A. No, sir.</p> <p>10:38:08 13 Q. And that was -- and you kept looking</p> <p>10:38:08 14 until you heard this bang?</p> <p>10:38:10 15 A. Yes.</p> <p>10:38:12 16 Q. And you never saw anybody?</p> <p>10:38:14 17 A. Never saw a person.</p> <p>10:38:16 18 Q. Never saw anybody walking in the</p> <p>10:38:16 19 crosswalk anywhere?</p> <p>10:38:18 20 A. No.</p> <p>10:38:20 21 Q. Did you see anybody walking outside</p> <p>10:38:20 22 of the crosswalk crossing Ninth Avenue?</p> <p>10:38:44 23 A. No.</p> <p>10:38:48 24 Q. As you were looking anticipating that</p> <p>25 there might be pedestrians crossing Ninth Avenue,</p>	<p>10:40:14 1 MICHAEL R. PHILLIPS</p> <p>10:40:18 2 Q. What manner do you claim that these</p> <p>10:40:20 3 two cars that went straight were in some way a</p> <p>10:40:22 4 cause of this accident?</p> <p>10:40:24 5 A. The second car because it had its</p> <p>10:40:28 6 left blinker and I was watching the car to</p> <p>10:40:30 7 proceed to make a left and he did not and he</p> <p>10:40:32 8 proceed to go straight away.</p> <p>10:40:34 9 Q. How in your opinion was that a cause</p> <p>10:40:36 10 of you striking a pedestrian?</p> <p>10:40:38 11 MR. BUTLER: Note my objection to</p> <p>10:40:40 12 the form of the question.</p> <p>10:40:42 13 Q. How was that in your opinion a cause</p> <p>10:40:46 14 of this incident taking place?</p> <p>10:40:50 15 A. Stopping quickly, watching the second</p> <p>10:40:52 16 car go and not seeing anybody in the crosswalk or</p> <p>10:40:58 17 anywhere around my truck.</p> <p>10:41:00 18 Q. What do you mean stopping quickly?</p> <p>10:41:04 19 A. Because the second car looked like it</p> <p>10:41:08 20 was making a left turn and it went straight</p> <p>10:41:12 21 instead, so as I was proceeding assuming that the</p> <p>10:41:14 22 car, the second car was going to make a left, so</p> <p>10:41:16 23 I had to stop the truck to let that car past and</p> <p>10:41:18 24 I proceeded to go and I heard the loud bang.</p> <p>25 Q. After you began to move to make this</p>
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<p>10:38:50 1 MICHAEL R. PHILLIPS</p> <p>10:38:56 2 was your view obstructed in any way?</p> <p>10:39:06 3 A. No, not to my knowledge, no.</p> <p>10:39:08 4 Q. Other than this evening did you take</p> <p>10:39:08 5 any special precautions of any kind because of</p> <p>10:39:10 6 the road or weather conditions?</p> <p>10:39:12 7 A. Yes.</p> <p>10:39:12 8 Q. What special precautions did you</p> <p>10:39:14 9 take?</p> <p>10:39:18 10 A. Driving slow, carefully making sure</p> <p>10:39:20 11 that everything was working on my truck safely.</p> <p>10:39:24 12 Make sure that the windows were not fogged up.</p> <p>10:39:28 13 Everything was clear, clean, the snow was off my</p> <p>10:39:32 14 truck, the outside review mirrors were wiped</p> <p>10:39:36 15 down, the windshield, back window and the back of</p> <p>10:39:40 16 my truck was wiped down clear of any snow debris.</p> <p>10:39:42 17 Q. Was your windshield clear of snow</p> <p>10:39:42 18 debris as you were making this turn?</p> <p>10:39:50 19 A. Yes, it was.</p> <p>10:39:54 20 Q. One of the questions that was asked</p> <p>10:40:00 21 of you at the scene was what was the cause of the</p> <p>10:40:02 22 accident and in parentheses it says as part of</p> <p>10:40:04 23 that answer "the other two cars that went</p> <p>10:40:12 24 straight".</p> <p>25 A. Yes.</p>	<p>10:41:22 1 MICHAEL R. PHILLIPS</p> <p>10:41:22 2 left turn, there came a point in time that you</p> <p>10:41:24 3 stopped your vehicle?</p> <p>10:41:26 4 A. Yes.</p> <p>10:41:28 5 Q. Where was your vehicle in</p> <p>10:41:28 6 relationship to this intersection when you</p> <p>10:41:28 7 stopped it?</p> <p>10:41:32 8 A. I don't know.</p> <p>10:41:34 9 Q. Were you in any way into Ninth Avenue</p> <p>10:41:34 10 already?</p> <p>10:41:38 11 A. Yes, partially Ninth Avenue.</p> <p>10:41:48 12 Q. How many lanes of Ninth Avenue did</p> <p>10:41:48 13 you traverse when you stopped your vehicle?</p> <p>10:41:48 14 A. I don't know.</p> <p>10:41:48 15 Q. Was it at least one lane?</p> <p>10:41:48 16 A. Yes.</p> <p>10:41:48 17 Q. At least two lanes?</p> <p>10:41:48 18 A. Possibly.</p> <p>10:41:50 19 Q. Why did you stop your vehicle?</p> <p>10:41:54 20 A. To let the second car go because I</p> <p>10:41:54 21 realized that he was not making a left turn on to</p> <p>10:41:56 22 Ninth Avenue.</p> <p>10:41:56 23 Q. When you stopped your vehicle, did</p> <p>10:41:58 24 you have a clear visibility of this intersection?</p> <p>25 A. No.</p>

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10:42:00 1 MICHAEL R. PHILLIPS
 10:42:02 2 Q. In what way was your view --
 10:42:04 3 A. Snow --
 10:42:10 4 Q. Let me finish my question. In what
 10:42:10 5 way was your view of this intersection obstructed
 10:42:12 6 when you stopped?
 10:42:14 7 A. The snow, the weather, snowing very
 10:42:16 8 heavy, visibility was not great, but it was
 10:42:18 9 passable.
 10:42:20 10 Q. Before you began to move again, did
 10:42:20 11 you take a look to your left?
 10:42:22 12 A. I don't know.
 10:42:26 13 Q. Did you take a look to your right?
 10:42:26 14 A. I was making a left-hand turn, I
 10:42:30 15 don't know.
 10:42:34 16 Q. You understand the pedestrians could
 10:42:36 17 be crossing Ninth Avenue from either your left or
 10:42:36 18 your right before you again proceeded to move?
 10:42:38 19 A. Yes.
 10:42:40 20 Q. And you understood that these
 10:42:40 21 pedestrians would have the right of way?
 10:42:42 22 A. Yes.
 10:42:44 23 Q. And they would also be having a green
 10:42:44 24 light?
 10:42:44 25 A. Yes.

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10:42:46 1 MICHAEL R. PHILLIPS
 10:42:46 2 Q. And you don't know if you looked to
 10:42:46 3 see them?
 10:42:48 4 A. I did not see anyone.
 10:42:52 5 Q. Did you look?
 10:42:54 6 A. I don't know if I looked or not.
 10:42:56 7 Q. So you don't know if you saw anybody
 10:42:56 8 because you don't remember if you looked?
 10:42:58 9 A. I did not see anyone.
 10:42:58 10 MR. BUTLER: Note my objection to
 10:43:04 11 the form of the question.
 10:43:08 12 Q. When you started again to move after
 10:43:14 13 you stopped for this vehicle who what is not
 10:43:16 14 making its left turn, where were you looking?
 10:43:20 15 A. Looking straight away toward the
 10:43:24 16 entrance to the Lincoln Tunnel.
 10:43:26 17 Q. At any time while your vehicle was
 10:43:28 18 moving, did you skid?
 10:43:30 19 A. No.
 10:43:34 20 Q. When you applied your brake to stop
 10:43:38 21 for this vehicle who you said you anticipated
 10:43:38 22 making this left turn, did your vehicle skid in
 10:43:38 23 any way?
 10:43:42 24 A. No.
 10:43:42 25 Q. Did you have any problem stopping

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10:43:42 1 MICHAEL R. PHILLIPS
 10:43:42 2 your vehicle?
 10:43:48 3 A. No.
 10:43:50 4 Q. After you began moving again after
 10:43:58 5 you stopped for this other vehicle, how far did
 10:44:02 6 your vehicle travel before you heard this sound?
 10:44:02 7 A. Maybe five feet, six feet, maybe. I
 10:44:06 8 don't know.
 10:44:06 9 Q. Did you have your foot on the gas in
 10:44:06 10 any way?
 10:44:08 11 A. Very little, yes.
 10:44:10 12 Q. What speed were you going?
 10:44:36 13 A. Approximately three miles an hour.
 10:44:38 14 Q. After you heard the sound in front of
 10:44:38 15 your vehicle, did you ever sound your horn?
 10:44:42 16 A. No.
 10:44:44 17 Q. Did you ever attempt to apply your
 10:44:44 18 brakes before you heard the sound?
 10:44:48 19 A. No.
 10:44:50 20 Q. After you came -- I know you came to
 10:44:50 21 a stop so you had to apply your brakes and you
 10:44:52 22 started moving again?
 10:44:52 23 A. Yes.
 10:44:56 24 Q. From the time you started moving
 10:44:56 25 again until you heard this sound, did you ever

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10:44:58 1 MICHAEL R. PHILLIPS
 10:44:58 2 attempt to stop again?
 10:45:32 3 A. No.
 10:45:36 4 Q. From the time that you left the
 10:45:42 5 accident scene, did you ever attempt to ascertain
 10:45:42 6 that the condition of this girl that you saw on
 10:45:44 7 this ground?
 10:45:44 8 A. I have asked and I got no response
 10:45:46 9 from anyone.
 10:45:48 10 Q. From who?
 10:45:50 11 A. I asked the police and they didn't
 10:45:52 12 give me any response.
 10:45:52 13 Q. Was that that same day or some other
 10:45:54 14 day?
 10:45:58 15 A. It was the same night after they had
 10:46:00 16 taken her to the hospital.
 10:46:00 17 Q. Did you accompany the police
 10:46:00 18 anywhere?
 10:46:04 19 A. No.
 10:46:04 20 Q. Where did you go from the scene?
 10:46:06 21 A. I went home.
 10:46:08 22 Q. After you went home, did you ever
 10:46:10 23 attempt to ascertain the condition of this girl?
 10:46:14 24 A. Not when I got home that night, no.
 10:46:14 25 MR. BUTLER: Note my objection to

16 (Pages 61 to 64)

Page 61	Page 63
10:46:16 1 MICHAEL R. PHILLIPS	1
10:46:16 2 the form of these questions. You may answer	2 STATE OF NEW YORK) Pg_of_Pgs
10:46:22 3 them.	3 ss:
10:46:22 4 Q. At any time after you went home, did	4 COUNTY OF NEW YORK)
10:46:24 5 you ever attempt to ascertain the condition of	5 I wish to make the following changes, for
10:46:24 6 this girl?	6 the following reasons:
10:46:30 7 A. No.	7 PAGE LINE
10:46:32 8 Q. When you saw this girl on the ground,	8 CHANGE: _____
10:46:34 9 did you observe her bleeding from anyplace?	9 REASON: _____
10:46:42 10 A. I did not.	10 CHANGE: _____
10:46:44 11 Q. What if anything did you observe the	11 REASON: _____
10:46:46 12 person that she was with saying?	12 CHANGE: _____
10:46:48 13 A. Pardon?	13 REASON: _____
10:46:50 14 Q. The person that she was with, this	14 CHANGE: _____
10:46:56 15 young man, what if anything did you hear him say?	15 REASON: _____
10:47:14 16 A. I did not hear him say anything.	16 CHANGE: _____
10:47:20 17 Q. Before you heard the sound on the	17 REASON: _____
10:47:22 18 left front side of your vehicle, did you see	18 CHANGE: _____
10:47:24 19 anybody at all crossing in front of your vehicle	19 REASON: _____
10:47:24 20 from right to left?	20 CHANGE: _____
10:47:30 21 A. No.	21 REASON: _____
10:47:30 22 MR. KAPLEN: Thank you, I have no	22 CHANGE: _____
10:47:30 23 further questions.	23 REASON: _____
10:47:36 24 MR. BUTLER: Thank you.	24
10:47:36 25 THE VIDEOGRAPHER: The time is 10:47	25
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10:47:40 1 MICHAEL R. PHILLIPS	1
10:47:44 2 a.m. and this marks the end of tape 1 and the end	2 CERTIFICATE
10:47:50 3 of the deposition. We are off the record.	3 STATE OF NEW YORK)
4 (TIME NOTED: 10:41 A.M.)	4 ss.
5	5 COUNTY OF NEW YORK)
6	6
7 MICHAEL R. PHILLIPS	7 I, WILLIAM VISCONTI, a Shorthand
8	8 Reporter and Notary Public within and for the
9 Subscribed and sworn to before me	9 State of New York, do hereby certify:
10 this ____ day of _____, 2007.	10 That MICHAEL R. PHILLIPS, the witness
11	11 whose deposition is hereinbefore set forth, was
12	12 duly sworn by me and that such deposition is a
13	13 true record of the testimony given by the
14	14 witness.
15	15 I further certify that I am not
16	16 related to any of the parties to this action by
17	17 blood or marriage, and that I am in no way
18	18 interested in the outcome of this matter.
19	19 IN WITNESS WHEREOF, I have hereunto
20	20 set my hand this ____ day of _____, 2007.
21	21
22	22
23	23 WILLIAM VISCONTI
24	24
25	25

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9	identification, Photographs.).....	32
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